

1 **R277. Education, Administration.**

2 **R277-102. Adjudicative Proceedings.**

3 **R277-102-1. Authority and Purpose.**

4 (1) This rule is authorized by:

5 (a) Utah Constitution Article X, Section 3, which vests the general control and
6 supervision of public education in the Board,

7 (b) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance
8 with its duties and responsibilities under the Utah Constitution and state law; and

9 (c) Subsection 63G-4-102(6) which allows agencies to make rules regarding
10 adjudicative proceedings in matters subject to UAPA.

11 (2) The purpose of this rule is:

12 (a) to specify how to conduct adjudicative proceedings in matters subject to UAPA;

13 (b) to provide for review of Board actions where no opportunity for administrative
14 review is provided by law and where there is a compelling reason for administrative review
15 to fully and fairly facilitate the Board's decision making process; and

16 (c) to identify procedures the Board may apply when administrative review of a Board
17 action is provided for by a law other than UAPA and the applicable law fails to identify
18 procedures to be followed for the administrative review.

19 (3) This rule does not apply to actions for which separate adjudicative procedures
20 are specifically provided for in statute, rule, or negotiated agreement.

21 (4) Nothing in this rule creates an independent basis for or requirement that the
22 Board review a final Board action.

23

24 **R277-102-2. Definitions.**

25 (1) "Agency head" means the Board Chair.

26 (2) "Default" means the failure of a party to an administrative proceeding to meet the
27 requirements or timelines of the proceeding.

28 (3) "Person" has the same meaning as set forth in Subsection 63G-4-103(1)(g).

29 (4)(a) "Presiding officer" has the same meaning as set forth in Subsection 63G-4-
30 103(1)(h).

31 (b) The Board chair may designate an attorney who works for the Board or an
32 Assistant Attorney General assigned to the Board to act as a presiding officer.

33 (5) "Utah Administrative Procedures Act" or "UAPA" means Title 63G, Chapter 4,
34 Administrative Procedures Act.

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36 **R277-102-3. Adjudicative Proceedings Subject to UAPA.**

37 (1) The Board shall conduct all requests for agency action as informal adjudicative
38 proceedings under UAPA unless another statute or rule specifically designates the
39 proceedings as formal.

40 (2) The presiding officer designated for a proceeding may convert an informal
41 proceeding to a formal proceeding and vice versa as provided under Subsection 63G-4-
42 202(3).

43 (3) A person seeking review of a Board action shall:

44 (a) submit a signed request for agency action in writing to the Board's secretary,
45 which includes the information identified in Subsection 63G-4-201(3)(a);

46 (b) mail a copy of the request to each person known to have a direct interest in the
47 request; and

48 (c) if no timeline is provided, submit the request for agency action within 30 days of
49 the action subject to review.

50 (4) The agency head shall promptly review the request for agency action and shall
51 notify the requesting party within 30 days in writing that:

52 (a) the request is granted and that the adjudicative proceeding is completed;

53 (b) the request requires further consideration, and an informal adjudicative
54 proceeding will be conducted to review the matter; or

55 (c) the request requires further consideration and, if expressly required by law, a
56 formal adjudicative proceeding will be conducted to review the matter.

57 (5) If the agency head determines a hearing will be held, whether formal or informal,
58 the agency head:

59 (a) shall designate a presiding officer for the hearing; and

60 (b) may designate a hearing panel, consisting of the presiding officer and three
61 Board members, to hear the evidence and make recommendations to the full Board.

62 (6) The agency head shall screen for conflicts of interest in making appointments
63 under Subsection (5).

64 ([6]7)(a) The presiding officer shall:

65 (i) chair the proceeding and make rulings on motions and evidentiary issues; and

66 (ii) if no panel is appointed, shall make all findings of fact, conclusions of law, and
67 recommendations to the Board based on a preponderance of the evidence.

68 (b) If the agency head designates a hearing panel, the Board members on the
69 hearing panel shall make all findings of fact, conclusions of law, and recommendations to
70 the Board based upon a preponderance of the evidence.

71 ([7]8)(a) The Superintendent shall make appropriate arrangements for an informal
72 adjudicative proceeding including:

73 (i) determining the date of the hearing;

74 (ii) designating the hearing location and other necessary information; and

75 (iii) on a case by case basis, determine if an informal adjudicative proceeding may
76 be held electronically.

77 (b) The Superintendent shall maintain a record of all aspects of an informal
78 adjudicative proceeding.

79 (c) The Superintendent may delegate the hearing arrangements and procedures to
80 the presiding officer.

81 ([8]9)(a) The presiding officer shall establish timelines for the hearing and shall
82 determine if a hearing is open or closed to the public consistent with the law.

83 (b) If the agency head determines that adjudicative proceedings are required, the
84 presiding officer shall conduct a hearing within 90 days of receiving the request for agency

85 action, unless the parties stipulate to a longer time period or the presiding officer grants a
86 motion for a longer time period for good cause.

87 ([9]10)(a) If the agency head determines the Board is legally required to provide a
88 formal adjudicative proceeding or the presiding officer designates a proceeding as formal,
89 the presiding officer shall conduct the proceedings in accordance with Sections 63G-4-204
90 through 63G-4-208.

91 (b) The presiding officer shall prescribe the means of discovery at the request of the
92 parties to the extent necessary to allow all parties access to relevant evidence.

93 ([40]11)(a) For both informal and formal adjudicative proceedings, the presiding
94 officer shall have discretion in managing and making procedural and evidentiary decisions
95 throughout the hearing process.

96 (b) In ruling on matters raised by the parties, the presiding officer may consider, but
97 is not bound by, the Utah Rules of Evidence and the Utah Rules of Civil Procedure.

98 ([44]12)(a) A presiding officer designated for a formal or informal adjudicative
99 proceeding may recommend a default to the Board consistent with deadlines set by the
100 presiding officer and the provisions of Section 63G-4-209.

101 (b) A party in default may seek to have a default set aside consistent with Subsection
102 63G-4-209(3) and deadlines set by the presiding officer.

103 (13) The presiding officer and members of the panel may not discuss the hearing
104 publicly until the Board discusses the panel recommendation in Board meeting.

105 ([42]14) The presiding officer shall submit a written hearing report formalizing the
106 hearing recommendation, to the Board and the parties, including findings of fact,
107 conclusions of law, and recommended action for all informal and formal adjudicative
108 proceedings within 20 calendar days of the conclusion of the hearing.

109 ([43]15) The Board shall consider the recommendation submitted under Subsection
110 ([42]14) and within a reasonable time shall:

111 (a) approve the recommendation under Subsection ([42]14); or

112 (b) issue an alternate written determination and action based on the findings of fact
113 made in the hearing report, if the Board disagrees with the proposed outcome in the hearing
114 report.

115 ([14]16) The Board's decision is the final administrative decision on the issue, subject
116 to a request for reconsideration applying the procedures of Section 63G-4-302.

117 ([15]17) The Superintendent shall respond to any request for reconsideration in
118 accordance with Subsection 63G-4-302(3).

119

120 **R277-102-4. Adjudicative Proceedings Not Subject to UAPA.**

121 (1) A person seeking review of a Board action not covered by UAPA shall submit a
122 written request for review of agency action to the secretary of the Board in the same manner
123 provided in Subsections R277-102-3(3).

124 (2) The agency head shall review the request for agency action in a timely manner
125 and notify the requesting [in] party within 30 days in writing:

126 (a) if the request is insufficient or untimely, that the request for review is denied; or

127 (b) if the request is sufficient and timely, that the Board will review the matter and
128 which method the Board will employ to conduct the review and make a final determination.

129 (3)(a) If a hearing is not expressly required by law, the Board may review a request
130 for agency action under this Section R277-102-4 through a documentary review, including
131 consideration of written information submitted by each of the parties.

132 (b) If the Board conducts a documentary review:

133 (i) the agency head will establish deadlines for document submission; and

134 (ii) the full Board will consider all documents submitted and issue a final
135 administrative determination [~~in writing in a timely manner~~] within 90 days of the request for
136 agency action.

137 (4) If a hearing is expressly provided for by law or the agency head determines the
138 matter will best be determined by means of a hearing, the agency head shall provide for an
139 informal adjudicative proceeding as outlined in Section R277-102-3, except that provisions
140 for reconsideration do not apply under this Section R277-102-4.

141 (5) In a request under this Section R277-102-4, a party may be found in default by
142 the Board consistent with deadlines set by the agency head or the presiding officer.

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144 **KEY: administrative procedures, rules and procedures**

145 **Date of Enactment or Last Substantive Amendment: April 8, 2021**

146 **Authorizing, and Implemented or Interpreted Law: 63G-4; 53E-3-401(4); Art X Sec 3**

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